

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEVON CHRISTOPHER WENGER,

Defendant.

Case No. [23-cr-00269-JSW-3](#)

**ORDER TO SHOW CAUSE RE
REPRESENTATION OF DEFENDANT
DEVON WENGER; SETTING
HEARING FOR MARCH 25, 2025 AT
1:00 P.M.**

On March 5, 2025, the second day of Defendant Devon Wenger's jury trial, the Court declared a mistrial following Attorney Nicole Lopes' representations to the Court that she was unable to continue effectively representing her client. The Court set a status conference for March 25, 2025 at 1:00 p.m. to set a renewed trial date, if necessary.

Attorney Lopes has not withdrawn as counsel for Wenger. Given that the reason for mistrial was Attorney Lopes' inability to effectively represent Wenger at trial, the Court has grave concerns that Attorney Lopes will not be able to represent Wenger at the retrial. In light of the bases for Ms. Lopes' motion for mistrial and the Court's observations of Ms. Lopes during the trial, the Court is tentatively inclined to find that Ms. Lopes is incompetent to represent Wenger at trial, and thus that the "purposes inherent in the fair, efficient[,] and orderly administration of justice" outweigh Wenger's right to counsel of his choice. *See United States v. Rivera-Corona*, 618 F.3d 976, 979 (9th Cir. 2010) (noting that "[t]he right to retained counsel of one's choice is not absolute"); *Wheat v. United States*, 486 U.S. 153, 159 (1988) (noting the "right to choose one's own counsel is circumscribed in several important respects.").

The Court therefore ORDERS the defendant to SHOW CAUSE regarding the following

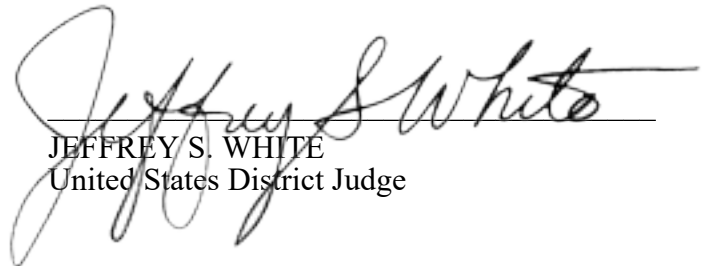
issues:

1. Does Ms. Lopes intend to be trial counsel at the retrial?
2. If yes:
 - a. What specific additional support will Ms. Lopes have before and during trial?
 - b. What specific measures does Ms. Lopes intend to take to ensure she is prepared for trial?
 - c. What specific measures does Ms. Lopes intend to take to ensure that she is able to comply with all Court orders and deadlines?
 - d. How can the Court be assured that Ms. Lopes' mental and physical health will not prevent her from effectively representing Wenger at trial?

The Court will conduct a hearing on this Order to Show Cause on March 25, 2025, at 1:00 p.m. in conjunction with the hearing on the Government's motion to exclude time. The parties shall file their responses to this Order in writing, and appropriately supported by declaration, by 10:00 a.m. on March 24, 2025. The response deadline is simultaneous as to both parties, and the Court will not permit reply briefing without a request for leave supported by good cause.

IT IS SO ORDERED.

Dated: March 20, 2025


JEFFREY S. WHITE
United States District Judge